

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202 <hr/> STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. FIRED UP FOR KIDS, INC., a Colorado Non-Profit Corporation, Defendants.	EFILED Document CO Denver County District Court 2nd JD Filing Date: Dec 15 2011 2:25PM MST Filing ID: 41424646 Review Clerk: Kyle T Gustafson <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General ALISSA HECHT GARDENSWARTZ, 36126* Assistant Attorney General alissa.gardenswartz@state.co.us JAY B. SIMONSON, 24077* First Assistant Attorney General jay.simonson@state.co.us 1525 Sherman Street, 4 th Floor Denver, CO 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record	Case No.: Div.:
COMPLAINT FOR JUDICIAL DISSOLUTION OF A NONPROFIT CORPORATION	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

INTRODUCTION

1. This is an action for judicial dissolution brought by the Attorney General for the State of Colorado pursuant to the Colorado Revised Nonprofit Corporations Act, Colo. Rev. Stat. §§7-134-301 through 304.

PARTIES

2. John W. Suthers is the duly elected Attorney General of the State of Colorado and is authorized under Colo. Rev. Stat. § 7-134-301 to initiate a proceeding to dissolve a nonprofit corporation.

3. Fired Up For Kids, Inc. is a Colorado nonprofit corporation with its principal street address listed as 620 16th Street, Suite 200, Denver, CO 80202.

JURISDICTION AND VENUE

4. Pursuant to Colo. Rev. Stat. §§7-134-302 through 304, this Court has jurisdiction to dissolve a nonprofit corporation.

5. At all relevant times during this action, Defendant Fired Up For Kids, Inc. maintained a principal place of business and a registered agent in Denver, Colorado. Therefore, venue is proper in the City and County of Denver, Colorado, pursuant to Colo. Rev. Stat. § 7-134-302(1) and Colo. R. Civ. P. 98.

RELEVANT TIMES

6. The conduct that gives rise to the claims for relief contained in this Complaint began in 2007 and has continued through the present.

STATUTORY BACKGROUND

7. The Colorado Revised Nonprofit Corporations Act allows for a nonprofit corporation to be dissolved in a proceeding by the Attorney General if it is established that a nonprofit corporation has obtained its articles of incorporation through fraud, or if it has “continued to exceed or abuse the authority conferred upon it by law.” Colo. Rev. Stat. §7-134-301(1)(a) and (b).

8. In a proceeding to dissolve a nonprofit corporation, the court may issue injunctions, appoint a receiver or custodian *pendente lite* with all powers the court directs, take other actions required to preserve the corporate assets wherever located, and carry on the activities of the nonprofit corporation until a full hearing can be held. Colo. Rev. Stat. §7-134-302(3).

GENERAL ALLEGATIONS

9. Defendant Fired Up For Kids, Inc. incorporated as a nonprofit corporation in Colorado on or about November 27, 2007. A copy of Fired Up For Kids’ Articles of Incorporation is attached hereto as **Exhibit A**.

10. The Fired Up For Kids' Articles of Incorporation list two members of the initial Board of Directors: Kirsten Hamling, the founder of Fired Up For Kids, and Alison Heller.

11. On October 4, 2011, Ms. Heller filed a Statement of Correction with the Colorado Secretary of State stating that she had never been an acting member of the board of directors for Fired Up For Kids, and had not realized that she was listed as a board member in the Articles of Incorporation until September 26, 2011.

12. According to its Articles of Incorporation filed with the Colorado Secretary of State, Fired Up for Kids is a nonprofit organization organized for a charitable purpose as identified in Section 501(c)(3) of the Internal Revenue Code. The Articles of Incorporation specify that Fired Up for Kids was organized to raise funds for The Children's Hospital Burn Center and other burn centers through the sales of firefighter calendars.

13. Fired Up For Kids' Articles of Incorporation further state that:

Upon the dissolution of this corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

14. Fired Up for Kids' Articles of Incorporation state that no part of the net earnings of the corporation shall inure to the benefit of or be distributable to its directors or officers. The Articles of Incorporation also state that the corporation shall not carry on any other activities not permitted to be carried on by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Section 501(c)(3) of the Internal Revenue Code prohibits a charitable 501(c)(3) organization from being organized or operated for the benefit of private interests.

15. In its solicitation materials, including materials sent to event sponsors as well as on its website, Fired Up For Kids has represented that it is a "Denver-based nonprofit organization" that donates all proceeds from special events and sales of The Colorado Firefighter Calendar to The Children's Hospital Burn Center.

16. Fired Up For Kids also has represented itself in public solicitation materials as a tax-exempt 501(c)(3) organization.

17. In fact, Fired Up For Kids never received 501(c)(3) status from the United States Internal Revenue Service. Nevertheless, upon information and belief, Fired Up For Kids never paid taxes.

18. Kirsten Hamling was the sole director of Fired Up For Kids and its founder. Ms. Hamling is also the sole signatory on Fired Up for Kids operating account, maintained at Wells Fargo Bank.

19. Almost immediately after the incorporation of Fired Up For Kids as a nonprofit corporation, Ms. Hamling began making charges of a personal nature to the Fired Up For Kids operating account. These charges continued through at least July 2010. Charges included money spent at nail and hair salons, money spent on gym memberships, money spent at department stores, and money spent on airline tickets to California. These charges had nothing to do with Fired Up For Kids.

20. Fired Up For Kids had a volunteer Executive Committee that assisted in putting on fundraising events for the organization. On September 21, 2011, the Executive Committee sent a letter to Ms. Hamling requesting that she resign from Fired Up For Kids based upon her admission that she co-mingled personal finances and finances of her for-profit company, Traction Communications, with Fired Up For Kids' finances. The letter also requested that Ms. Hamling turn over all corporate assets of Fired Up For Kids to the Executive Committee such that it could continue operations of the organization.

21. Ms. Hamling submitted her letter of resignation from Fired Up For Kids, Inc. to the Executive Committee on September 21, 2011. However, she continues to maintain control over all Fired Up For Kids' assets, including control over its operating account as well as its calendar inventory and intellectual property.

22. On November 9, 2011, Ms. Hamling issued a press release through her attorneys stating that Fired Up for Kids is a for-profit company, and that she is the sole owner. However, Fired Up For Kids continues to be registered with the Colorado Secretary of State as a nonprofit corporation.

23. Similarly, the Fired Up For Kids website language has been changed to state that it is simply an "organization" as opposed to a "Denver-based nonprofit organization," and to state that Fired Up For Kids donates only a portion of the proceeds it receives from special events and sales of The Colorado Firefighter Calendar to The Children's Hospital Burn Center.

24. The members of the Fired Up For Kids Executive Committee consequently have formed another nonprofit corporation, Colorado Firefighter Calendar, Inc., the purpose of which is substantially similar to that of Fired Up For Kids as stated in its Articles of Incorporation, attached hereto as **Exhibit B**.

FIRST CLAIM FOR RELIEF

(Judicial Dissolution Due to Obtaining Articles of Incorporation Through Fraud)

25. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 24 of this Complaint.

26. Through the above-described conduct, Fired Up For Kids obtained its Articles of Incorporation through fraud. Specifically, it represented to the Colorado Secretary of State that it was filing Articles of Incorporation as a nonprofit corporation when, in fact, its president and founder operated the organization as a for-profit corporation. Additionally, in its Articles of Incorporation, Fired Up For Kids represented that Alison Heller was a member of the original board of directors when she was never a member of the board of directors.

SECOND CLAIM FOR RELIEF

(Judicial Dissolution Due to Nonprofit Corporation Continuing to Exceed or Abuse the Authority Conferred Upon It By Law)

27. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 26 of this Complaint.

28. Through the above-described conduct, Fired Up For Kids is continuing to exceed and abuse the authority conferred upon it by law. Specifically, Fired Up For Kids incorporated as a nonprofit corporation and represented itself to the public as a nonprofit, tax-exempt charitable organization, but operated as a for-profit corporation and used funds raised from the public for private inurement.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against the Defendant and the following relief:

A. Pursuant to Colo. Rev. Stat. § 7-134-304(1), an order entering a decree that dissolves Fired Up For Kids, Inc.

B. An order compelling a full and complete accounting of Fired Up For Kids, Inc.'s assets.

C. An order directing the winding up and liquidation of Fired Up for Kids' activities in accordance with Colo. Rev. Stat. §7-134-105 including, but not limited to, transferring Fired Up For Kids' assets to Colorado Firefighter Calendar, Inc., a Colorado nonprofit corporation with a substantially similar purpose to that of the purpose stated in Fired Up For Kids' Articles of Incorporation.

D. An order directing the giving of notice to claimants in accordance with Colo. Rev. Stat. §§7-90-911 and 912.

E. Any such further orders as the Court may deem just and proper to effectuate the purposes of the Colorado Revised Nonprofit Corporations Act, and to protect Fired Up For Kids, Inc.'s assets.

Dated this 15th day of December, 2011.

JOHN W. SUTHERS

Attorney General

/s/ Alissa H. Gardenswartz

ALISSA H. GARDENSWARTZ, 36126*

Assistant Attorney General

Consumer Protection Section

Attorneys for Plaintiff

*Counsel of Record

Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.